

NATIONAL PUBLIC LANDS TASK FORCE ET AL.

IBLA 81-812

Decided August 26, 1982

Appeal from decision of Arizona State Director, Bureau of Land Management, denying protest of elimination of a portion of an inventory unit from further consideration as a wilderness study area. (8500(931)).

Affirmed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

2. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976,

43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

APPEARANCES: Laurens H. Silver, Esq., Stephan C. Volker, Esq., Sierra Club Legal Defense Fund, for appellants; Barbara Berschler, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

National Public Lands Task Force (NPLTF), Arizonans for Wild and Scenic Rivers, and the Sierra Club appeal from a decision of the Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying their protests of the elimination of a portion of inventory unit AZ 4-22/23/24(A) (Gila Box) from further consideration as a wilderness study area (WSA). A list of those units designated as WSA's was published in the Federal Register on November 14, 1980. 45 FR 75577.

The State Director's designation of the WSA was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired

condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's publication of those units designated as WSA's marks the end of the inventory phase of the review process and the beginning of the study phase.

Unit AZ-4-22/23/24, Gila Box was established by combining three initial inventory units: AZ-4-22, Turtle Mountain; AZ-4-23, San Francisco; AZ-4-24, George Hill. For the purposes of the intensive inventory, the three units were studied as a single unit. During the intensive inventory, the deletion of a portion of the unit resulted in the division of the unit into two parts, AZ-4-22-23-24(A), Gila Box, and AZ-4-22-23-24(B) Turtle Mountain. AZ-4-22-23-24(A), Gila Box, contains the area comprising the San Francisco subunit in issue on appeal.

In the wilderness intensive inventory of unit AZ-4-22/23/24A, Gila Box, approved by the State Director on March 14, 1980, BLM recommended that 19,622+/- acres be approved as a WSA. In the narrative summary on the naturalness criterion BLM stated that from certain areas (at higher elevations) throughout the unit, persons visiting the area may view the development of the mine at Morenci, and that under certain weather conditions smoke from the smelter passes over the unit. However, BLM determined that the outside sights and sounds, as well as the smelter smoke, do not appreciably detract from the unit's naturalness.

During the public comment period, BLM received a number of comments addressing the adverse effects of the Morenci copper mine. BLM reevaluated these effects and stated in its Decision Report of November 1980 that there was indeed a significant impact on that portion of the unit east of Eagle Creek. BLM explained that visitors to the area would find little respite from the sights and sounds of the mine and tailings ponds. BLM concluded that the nature of these influences was overwhelming and dropped 6,152 acres from the unit.

Protesting this decision, appellants argued that the sights and sounds located entirely outside the unit were not by themselves sufficient grounds for deletion of this area, and even if they were sufficient, BLM should have deleted only those portions of the subunit actually impacted by the mine. The State Director denied the protest stating that the presence of mining overwhelmingly impacted the subunit and that the presence of an overwhelming impact in so much of the subunit justified eliminating the entire subunit.

On appeal, appellants present the following contentions: (1) The State Director's deletion of the subunit from the proposed WSA solely because of the mining impacts was improper; (2) the majority of the subunit is not affected at all by the mine and there is no ground for deleting it; (3) the State Director did not adequately document the basis for his decision to delete the subunit.

Accompanying appellants' appeal was a letter (Exh. J) from BLM's Safford District Manager dated June 30, 1981, to the Sierra Club Legal Defense Fund in which the District Manager explains the basis for eliminating the subunit. He states that the magnitude of the operation is visible from most areas outside the river channel. Included with this letter is a map which, he explains, illustrates the area overwhelmingly impacted by the Phelps Dodge Operation as determined by the wilderness staff members involved in the reevaluation. Appellant also submits affidavits (Exhs. K, L) of visitors to the area attesting to the fact that the wilderness values of the area as a whole are not overwhelmingly impacted by the presence of the mine.

The issue on appeal is whether the outside sights and sounds are such an overwhelming impact on the subunit as to justify deletion of the subunit in its entirety.

After careful review of the record, we find that BLM's decision to eliminate the outer perimeters of the subunit, as depicted on the map accompanying exhibit J, was proper, but that the interior portions of the subunit should be included in the Gila Box WSA for further wilderness study.

[1] Organic Act Directive (OAD) 78-61, change 3 (July 12, 1979), at page 4, provides the following guidance on the issue of outside sights and sounds:

Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

Therefore, outside "sights and sounds" must be considered during the inventory phase only to the extent they might deprive an area of wilderness characteristics. Carl W. Clark, 65 IBLA 153, 157 (1982); Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981) (appeal pending).

Appellants' contentions on appeal, contradicting BLM's determination that impacts from the mine were overwhelming, ably demonstrate the highly subjective judgments which BLM is called on to make during the inventory. In the present case, this judgment was entrusted to BLM personnel whose reports evidence firsthand knowledge of the land. Assisting BLM were comments from numerous groups and individuals whose interests span a broad spectrum. BLM's judgment in such matters, we feel, is entitled to considerable deference. Such deference will not be overcome by an appellant expressing simple disagreement with a subjective conclusion of BLM. This is not to suggest that we abdicate our review of subjective wilderness judgments. As the delegate of the Secretary's review authority, such abdication would be improper. We

do mean to suggest, however, that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome the deference we accord to BLM in such matters. Appellants' arguments as they relate to the outer portions of the subunit are lacking in detail and do not meet this burden. Arizona State Association of 4 Wheel Drive Clubs, 65 IBLA 126 (1982); Conoco, Inc., 61 IBLA 23 (1981); C & K Petroleum Co., 59 IBLA 301, 308, 309 (1981); Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981).

In reference to the outer portions of the subunit as shown on the map, no error is established by BLM's consideration of sights and sounds outside the unit's boundary. Though it is unusual to do so, BLM may consider such items during the inventory in accordance with OAD 78-61, Change 3, at page 4. Sierra Club, 62 IBLA 367, 372-73 (1982). The State Director's decision that the impacts of the mining operation on the naturalness of the subunit were so overwhelming as to necessitate its being deleted entirely was based upon the on-the-ground reevaluations made by experienced personnel guided by established procedures and criteria. We defer to BLM's judgment as it relates to the outside portions of the map.

Considering the information provided by the map, we find that there are no grounds for deleting the entire subunit. BLM marked the outside portions of the subunit on this map as an "area overwhelmingly impacted by Phelps Dodge Operation." The inside area of the unit, however, does not appear to be overwhelmingly impacted. BLM noted in the intensive inventory approved March 14, 1980, that from certain areas (at higher elevations) throughout the subunit, persons visiting the area may view the development of the mine at Morenci. This analysis conforms with BLM's depictions on the map. The map from the field notes and narrative from the intensive inventory reflect a thorough acquaintance with the unit and a credible appraisal of its wilderness characteristics. BLM's conclusion that the entire subunit be deleted as stated in the Decision Report of November 1980 overrides this earlier reasoning and is not justified. See Conoco, Inc., 65 IBLA 84 (1982).

In its answer to appellants' statement of reasons, BLM contends that the map "was simply a reproduction from field notes." We do not find that this detracts from its value as a reference to determine how BLM arrived at its conclusion. The field notes are part of BLM's decisionmaking process and therefore may be considered. See Conoco, Inc., 65 IBLA 84, 92.

As previously noted, BLM's subjective judgment concerning the naturalness criterion is entitled to considerable deference, and an appellant seeking to substitute its subjective judgment for that of BLM has a particularly heavy burden to overcome that deference. In its response to appellants' statement of reasons, BLM states that appellants have failed to point out specific error in BLM's decision. We find that appellants have raised substantial questions concerning BLM's conclusion on the naturalness criterion and that BLM has failed to consider all factors involved. Appellants have shown, by affidavits, that the wilderness experience of the visitor is not severely affected by the presence of the Morenci mine in the interior areas of the subunit.

Mr. Thoron Lane describes his visit to the subunit as follows:

One of the nicest raft trips I've ever experienced consisted of the San Francisco and Gila combined from Clifton to Safford. This trip is a truly unique experience. From Smuggler Canyon on the San Francisco to the confluence with the Gila River, there are no sights of man. From the river level one can't see any evidence of man and his makings. It is a step into the wild.

At the confluence with the Gila, the walls rise up in a more sharp, direct fashion giving one a box-like atmosphere. Again, from the river level there are no sights of man. It is a true wilderness.

On all my trips into this area, I've never seen another human. This is in sharp contrast to other river experiences . . . In my opinion, it is one of the finest river-wilderness experiences one can obtain in the west.

(Exh. L at 3). Mr. Nicholas Van Pelt describes his experience in the area:

I have repeatedly traversed, on foot, those segments of the San Francisco and Gila rivers within the subunit, and at no time as I walked along the rivers was I able to see, hear, or smell any evidence of the mining operations or any other human activities. My companions and I have found it invariably easy to find solitude within the subunit, and to enjoy the area's water-oriented features without being exposed to industrial intrusions or other persons.

(Exh. K at 1).

Appellants point to the fact that recreation takes place in the subunit almost exclusively in the river canyon which is entirely shielded from the mine. Nicholas Van Pelt verifies this in his affidavit by stating that "recreation in the unit is almost exclusively confined to the river canyon. The surrounding hills, although they are very attractive and form an integral part of the river-wilderness experience, are very dry and hot and are rarely used for hiking or other recreational activities" (Exh. K at 1).

BLM emphasizes in its answer that the effects of the nearby mining operation upon the naturalness of the subunit were of such an overwhelming nature in so much of the subunit as to justify its entire elimination from further study. We find, however, that the interior portion of the subunit meets the definition of section 2(c)(1) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which requires that the area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." Under the circumstances, we remand this case to BLM to reestablish the boundary of the unit in accordance with the exhibit J map so that the inside portion of the subunit will be included in the Gila Box for further wilderness study.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside and remanded in part.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

